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5 In the Matter of

No. G02-45

6 THE APPLICATION REGARDING  
7 THE CONVERSION AND  
8 ACQUISITION OF CONTROL OF  
9 PREMIERA BLUE CROSS AND ITS  
10 AFFILIATES

DECLARATION OF JAMES T.  
ODIORNE

11 I, JAMES T. ODIORNE, do hereby declare that the following facts are personally known to  
12 me and declare as follows:

13 1. I am now, and at all times hereinafter mentioned was, a citizen of the United States  
14 and a resident of the State of Washington, am over the age of eighteen years, and am  
15 competent to testify in a court of law. The Office of Insurance Commissioner of the State of  
16 Washington employs me as the Deputy Insurance Commissioner for Company Supervision. I  
17 have been assigned the responsibility to serve as the coordinator of the OIC Staff Review  
18 Team in evaluating the Form A filed by Premera Blue Cross and its Affiliates ("Premera") in  
19 this matter and in preparing and submitting the Review Team's recommendation to the  
20 Commissioner of Insurance regarding the action to be taken with respect to the Application. I  
21 have been employed in the capacity of Deputy Insurance Commissioner for six years and have  
22 been involved in one capacity or another in Form A proceedings since, at least, 1983. I am  
23 very familiar with Form A proceedings.

24 2. On October 10, 2003, I sent to Yoram Milo, Executive Vice President and Chief  
25 Legal Officer of Premera Blue Cross ("PBC"), an email message outlining my concerns about  
26 conducting negotiations relating to Form A issues identified by the OIC Staff's consultants in

1 their draft reports as well as a proposal for conducting those negotiations. A copy of the email  
2 message is attached hereto and marked as Exhibit "A."

3 3. On October 13, 2003, I received via facsimile transmission Mr. Milo's letter  
4 response to my email message. A copy of Mr. Milo's letter is attached hereto and marked as  
5 Exhibit "B."

6 4. On October 14, 2003, I sent to Mr. Milo another email message responding to his  
7 letter. A copy of this email message is attached hereto and marked as Exhibit "C."

8 5. On that same day, I received via facsimile transmission Mr. Milo's letter response  
9 to my email message. A copy of Mr. Milo's letter is attached hereto and marked as Exhibit  
10 "D." Thereafter, a meeting was scheduled for October 22, 2003, to discuss the Form A issues  
11 consistent with Mr. Milo's agreement to the proposal contained in Exhibit "C."

12 6. In the Thirteenth Order, the Commissioner established October 15, 2003 as the  
13 deadline for Premera to amend Premera's Form A. Premera failed to submit any amendments  
14 to its Form A by close of business on that date.

15 7. On October 17, 2003, I received a letter with an enclosed outline listing transaction  
16 structure comments from John P. Domeika, Senior Vice President and General Counsel of  
17 PBC. A copy of Mr. Domeika's letter is attached hereto and marked as Exhibit "E." The  
18 outline is attached hereto and marked as Exhibit "F." Because Premera has designated the  
19 outline as "Confidential and Proprietary Information – Not Subject to Public Disclosure,"  
20 Exhibit "F" is filed in a sealed envelope.

21 8. On the same day, I received another letter from Mr. Domeika accompanying an  
22 "Equity Incentive Plan" or stock ownership plan and a consulting presentation. A copy of Mr.  
23 Domeika's letter is attached hereto and marked as Exhibit "G." A copy of the Equity  
24 Incentive Plan is attached hereto and marked as Exhibit "H." A copy of the consulting  
25 presentation is attached hereto and marked as Exhibit "I." Because Premera has indicated that  
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1 the consulting presentation contains confidential and proprietary information, Exhibit "I" is  
2 filed in a sealed envelope.

3 9. On October 20, 2003, I sent to Mr. Milo and Mr. Domeika an email message  
4 designating topics for discussion at the October 22<sup>nd</sup> meeting. A copy of this email message is  
5 attached hereto and marked as Exhibit "J."

6 10. Submission of Exhibits "E" through "I" constitutes an attempt by Premera to  
7 amend its Form A after the Commissioner's deadline for doing so has elapsed. As revealed  
8 by the Exhibits, Premera intends to materially modify a substantial number of the terms and  
9 conditions of its Form A. RCW 48.31C.030(5)(a)(ii)(C) provides that the Commissioner may  
10 include in an order approving a Form A transaction conditions for removal of potential bases  
11 of disapproval. Premera's list of issues (Exhibit "F") and the Equity Incentive Plan (Exhibit  
12 "H") exceed in scope, significance and magnitude the purpose of that provision. In my  
13 experience, this provision has never previously been relied upon as authority for effecting  
14 such substantial and significant changes to a Form A itself. But the types of changes  
15 contemplated by Premera have always been implemented through amendment of a Form A  
16 after negotiation. In the ordinary course of a Form A proceeding, the applicant and the OIC  
17 engage in a dialogue early in the process to assist the applicant in complying with regulatory  
18 requirements. If compliance is possible, the dialogue may result in submission of  
19 amendments to the Form A that satisfy the OIC that the requirements have been met and the  
20 transaction should be approved. The OIC Staff invited Premera to engage in such a dialogue  
21 in February 2003 concerning many of the issues contained in Premera's list of issues but  
22 Premera declined the invitation.

23 11. I am informed by the OIC Staff's consultants, specifically representatives of  
24 PricewaterhouseCoopers, The Blackstone Group and Cantilo & Bennett, that even if they are  
25 provided with notice of the outcome of the discussions scheduled for October 22<sup>nd</sup> by October  
26 24<sup>th</sup>, it is highly unlikely that their final reports (due October 27<sup>th</sup>) will address any material

1 changes to the Form A resulting from the discussions. Nonetheless, I have instructed the  
2 consultants to make every effort to review the Equity Incentive Plan and incorporate their  
3 findings in the final reports.

4 12. I declare under penalty of perjury under the laws of the State of Washington that  
5 the foregoing is true and correct.

6 DATED this 21<sup>st</sup> day of October, 2003 in Tumwater, Washington.

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9 JAMES T. ODORNE  
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